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No. 477

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

ROBERT HAINSWORTH,

Appellant,

v.

CRAWFORD MARTIN, SECRETARY OF STATE OF THE STATE OF TEXAS, ET AL,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF TEXAS

JURISDICTIONAL STATEMENT

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ON APPEAL FROM THE SUPREME COURT OF TEXAS

JURISDICTIONAL STATEMENT

To the Honorable Mr. Chief Justice and to the Honorable Mr. Justices of the Supreme Court of the United States:

OPINIONS BELOW

The decision and opinion of the District Court of Travis County, Texas, 53rd Judicial District, is not reported. However, the decision and opinion is found in (Tr-59-61). The opinion of the Court of Civil Appeals, Third Supreme Judicial District of Texas, is reported in 386 S.W. 2d 202. The Supreme Court of Texas did not render an opinion in the case, but denied appellant's Application for Writ of

Error, with the notation "Refused. No Reversible Error." And it is so cited in Texas Writs of Error Table, 386 S.W. 2d 202-Ref. N.R.E. The opinion of the District Court of Travis County, Texas, 53rd Judicial District, excerpted from the Final Judgment, and the opinion of the Court of Civil Appeals, Third Supreme Judicial District of Texas, are set forth in the Appendix, infra, Appendix A. The order of the Supreme Court of Texas denying Application for Writ of Error and order of the Supreme Court of Texas overruling petitioner's Motion for Rehearing of Application for Writ of Error are also set forth in Appendix A, infra.

JURISDICTION

The grounds on which the jurisdiction of this Court is invoked, are shown below:

This suit was brought by the appellant challenging on grounds of racial discrimination the constitutionality of the method or system of apportionment of the Legislature of the State of Texas in apportioning the House of Representatives of the Texas Legislature, as enacted in a State Statute, and asking for a declaratory judgment and for injunctive relief. The Statute pursuant to which this suit is brought is the Apportionment Act of 1961 (Acts 1961, 57th Leg. Regular Session, Page 544, Ch. 256, codified in Vernon's Texas Civ. St., 1962 Supp. Art. 195). The date of the order of the Supreme Court of Texas denying Appellant's Application for Writ of Error with the notation "Refused. No Reversible Error" which is the order sought to be reviewed, was April 14, 1965, and the date of the final order of the Supreme Court of Texas overruling appellant's Motion for Rehearing of his Application for Writ of Error was May 26, 1965, and the time of entry was shortly after 9:00 A.M., on the respective dates. (For the Supreme Court

of Texas announces these various orders from the bench beginning at 9:00 A.M., on Wednesdays.) The Notice of Appeal was filed on June 22, 1965, in the Court of Civil Appeals, Third Supreme Judicial District, Austin, Texas. Jurisdiction to review a decree of the highest court of a state by appeal is conferred on this Court by Title 28, United States Code, Sections 1257 (2) and 2101 (c). That such jurisdiction exists in the circumstances of this case is sustained by the following decisions: *Baker* v. *Carr*, 369 U.S. 186 (1962), 82 S. Ct. 691, 7 L. Ed. 663; *Maryland Committee for Fair Representation* v. *Tawes*, 377 U.S. 656 (1964), 84 S. Ct. 1429.

STATUTE INVOLVED

The validity of a statute of the State of Texas is involved in this appeal. The statute that is involved is lengthy and the volume and page where the official citation may be found is Volume 1, Vernon's Ann. Civ. St. of Texas Art. 195, 1964 Cumulative Annual Pocket Part, pages 91-95, and Vernon's Texas Civ. St., 1962 Supp. Art. 195, pages 44-47. The pertinent text is set forth in Appendix B, hereto.

QUESTION PRESENTED

Whether the method of apportionment of the House of Representatives of the Legislature of the State of Texas, with respect to the appellant who is colored, and to others similarly situated, violate Section 1, Article XIV of the Constitution of the United States, because the larger counties of the State of Texas that are entitled to two or more State Representatives, do not elect such State Representatives from individual State Representative Districts that are each separate and distinct from every other State Representative District, both as to area and population?

SUBSIDIARY QUESTIONS — DEEMED TO BE FAIRLY COMPRISED IN THE FEDERAL QUESTION PRESENTED

(A) Does a method of apportionment of the Texas Legislature which provides for the at-large election of State Representatives by having elections either county-wide, or from political or area subdivisions of a county, where such county is entitled to two or more State Representatives, violate Section 1, Article XIV of the Constitution of the United States, when there is included in the population of such county a minority racial group, or minority racial groups?

(B) That if the method of apportionment of the House of Representatives of the Texas Legislature is violative of Section 1, Article XIV of the Constitution of the United States, and individual State Representative Districts are required, both as to area and population; where there is a racial minority group within the State, should the population variance between State Representative Districts be the minimum from the population of the norm of the average State Representative District, so that each member of a racial minority group within the State will be afforded the equal protection of the laws with respect to all other citizens of the State?

(C) That if the method of apportionment of the House of Representatives of the Texas Legislature is violative of Section 1, Article XIV of the Constitution of the United States, is any proposed Resolution of the Texas Legislature to the Congress of the United States to call a Constitutional Convention to amend the Constitution of the United States, invalid, for the reason that this appellant and other colored citizens of the State of Texas are deprived of the equal protection of the laws under Section 1, Article XIV

of the Constitution of the United States, in that there has been denial by the State of Texas to a colored person or to colored people of an actual voice in the State Legislature, and to participate at every stage of the amending process in proposed amendments to the Constitution of the United States:

(D) That if the method of apportionment of the House of Representatives of the Texas Legislature is violative of Section 1, Article XIV of the Constitution of the United States; are the proposed Amendments to the Constitution of Texas that were passed at the last Legislative session of the Legislature, 59th Legislature, Regular Session, invalid, for the reason that this appellant and other colored citizens of the State of Texas are deprived of the equal protection of the laws under Section 1, Article XIV of the Constitution of the United States, in that there has been denial by the State of Texas of participation by a colored person or colored people at every stage of the amending process in proposed Amendments to the Constitution of Texas?

(E) That if the method of Apportionment of the House of Representatives of the Texas Legislature is violative of Section 1, Article XIV of the Constitution of the United States, should a Special Session of the Legislature of the State of Texas be convened as soon as possible, in order solely, to constitutionally reapportion the Texas Legislature?

(F) And that as soon as possible thereafter, should the State of Texas hold Special Elections for the Legislature, with the newly elected members of the Texas Legislature to hold office from the date of their election until the next regular date and time for the assumption of office by the members of the subsequently duly elected Legislature of the State of Texas?

STATEMENT

The plaintiff, the appellant here, is colored and a negro, is a citizen, voter and taxpayer of Harris County, Texas, and is a member of a minority racial group in Texas. (Tr. 2) (S.F. 159, 160). It is noted from the Apportionment Act: that there are 17 counties that are entitled to two or more Representatives in the House of Representatives of the State Legislature, and that some of these counties are Harris, Travis, Bexar, and Dallas; that the above mentioned counties are respectively Representative District No. 22, 55, 68, and 51; that each of the above numbered Representative districts, constituting only one Representative district, have within such Representative district, such designations as Place 1, Place 2, Place 3, etc., and that each of the above numbered Representative districts have the following number of places assigned to each respectively: Harris County, District 22, has 12 Places; Travis County, District 55, has 4 Places; Bexar County, District 68, has 7 Places; and Dallas County, District 51, has 9 Places. The 1960 population statistics, taken from the U. S. Department of Commerce, Bureau of the Census Publications show: that the total population of Texas is 9,579,677 (S.F. 17); that the total white population of Texas is 8,374,831, which includes persons with Spanish surnames; that the total negro population of Texas is 1,204,846 (S.F. 20); that in Harris County there are 993,385 white persons and 246,351 negro; and that in Travis County there are 184,912 white persons and 26,863 negro; and that in Dallas County there are 811,261 white persons and 137,954 negro. (S.F. 24, 27). That testimony from various members of the State Legislature showed: has never known a colored person to be elected to the State Legislature. (S.F. 75, 76); that a State Senator from Harris County represented the same area and geographical division and population as a State

Representative from Harris County, (S.F. 74, 82); that Harris County is only one Representative district in which there are 12 Places; that Harris County is approximately 50 miles across; that the State Representative District which he represents is approximately twice the size of the District of the United States Representative in the House of Representatives of the Congress of the United States from Harris County, Texas. (S.F. 81, 82); that a negro has not served in the State Legislature in over 70 years; that some very capable colored people have offered themselves as a candidate for the State Legislature from Harris County, Texas. (S.F. 93); that a former candidate for the State Legislature, colored, testified that as a citizen of Harris County, Texas, he would have his rights diminished and diluted in proportion to At Large Representation which we now suffer. (S.F. 145, 146, 150).

The stage in the proceedings in the court of first instance at which, and the manner in which, the federal question sought to be reviewed was raised, was by the pleadings and by introduction of evidence; and on appeal to the Court of Civil Appeals, the federal question sought to be reviewed was raised by Point of Error, and on Motion for Rehearing in the Court of Civil Appeals, the federal question sought to be reviewed was raised by Assignment of Error; and on review in the Supreme Court of Texas, the federal question sought to be reviewed was raised by Point of Error in the Application for Writ of Error; and by Assignment of Error in Appellant's Motion for Rehearing before the Supreme Court of Texas. That the way in which the federal question was passed upon are as follows: By the District Court of Travis County, by holding that the present Apportionment Act is not in violation of the Constitution of the United States. (Tr. 61); By the Court of Civil Appeals by holding that "Several recent opinions of

the United States Supreme Court have foreclosed appellant's contention that the present method of selecting members of the Legislature in the multimember counties is in violation of the 14th Amendment of the Federal Constitution." (386 S.W. 2d 204); By the Supreme Court of Texas by refusing to grant the Application for Writ of Error with the notation "Refused. No Reversible Error" and by overruling the petitioner's Motion for Rehearing of Application for Writ of Error. (See Orders of the Supreme Court of Texas, dated April 14, 1965, and May 26, 1965, enclosed in the record, and also in Appendix A.)

That in January, 1965, a three-judge District Court in Houston, Texas, declared in a Summary Judgment in the case of *Kilgarlin, et al* v. *Martin, et al,* that the Texas Apportionment laws were unconstitutional, and allowed the Legislature of the State of Texas until August 2, 1965, to reapportion the Legislature. That the State Legislature on or about May 27, 1965, enacted a new statute reapportioning the Legislature, and under the new Reapportionment Act, the county-wide or at-large election method or system of election remained in effect in the larger counties of the State that are entitled to two or more State Representatives as before, except that Harris County, being entitled to 19 State Representatives under the rule laid down in *Reynolds* v. *Sims,* instead of 12 as presently, was apportioned in the following manner, instead of all of the State Representatives being elected at-large or county-wide from Harris County, they were to be elected at-large from the three new Congressional Districts in Harris County, Texas, with seven State Representatives being elected from one of the three Congressional Districts, and with six State Representatives being elected from each of the other two Congressional Districts. The Reapportionment Act apportioning the State of Texas into State Representative Districts, was enacted by

the 59th Legislature, Regular Session, 1965, and is found in Vernon's Texas Session Law Service, Volume No. 4, Laws 1965, 59th Legislature, Regular Session, pages 753-759.

During the 59th Legislature, Regular Session, the Legislature of the State of Texas passed a Resolution asking the Congress of the United States to call a convention for the purpose of amending the Constitution of the United States to allow states with bi-cameral legislatures to apportion one house of the Legislature on a basis other than population.

And during the 59th Legislature, Regular Session, the Legislature passed a large number of proposed amendments to the Constitution of Texas, among which are excerpts from three that are set forth in Appendix C, and which are challenged as being unconstitutional.

THE QUESTIONS ARE SUBSTANTIAL

This appeal presents a question that is believed has never been actually passed upon by this Court.

The question presented and the subsidiary questions are of genuine public importance to all of the people of the State of Texas, and their resolve will make a great contribution toward better government in the State of Texas for all of the people of the State.

This appeal raises the question whether multi-member districts in a county or an area or political subdivision, which contains a racial minority group, violates the 14th Amendment to the Constitution of the United States. Whether the vote of a negro in the larger counties of the State of Texas that are entitled to two or more State Representatives can be so diluted by the method or system of apportionment that the vote of a negro citizen is not approximately equal in weight to that of a white citizen in

the State, or in the same county. This Court stated in *Reynolds* v. *Sims,* 84 S. Ct. 1390 (1964) "Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State".

The issues in this case are vital to good government in Texas, and affect the welfare and well being of the negro population of the State of Texas in particular and of all people in the State in general, and the question presented, and the subsidiary questions, may have an important governmental bearing on many other States as well and other sections of the United States. In *Reynolds* v. *Sims,* 84 S. Ct. 1390, this Court stated "What is marginally permissible in one State may be unsatisfactory in another, depending on the particular circumstances of the case. Developing a body of doctrine on a case-by-case basis appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements in the area of state legislative apportionment. Cf. Slaughter-House Cases, 16 Wall 36, 78-79, 21 L. Ed. 394, and in *Fortson* v. *Dorsey,* 85 S. Ct. 501 (1965) this Court stated "It might well be that, designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster." For the reasons stated, appellant respectfully submits that the question presented and subsidiary questions deemed to be fairly comprised in the federal question, are so substantial and of such public importance as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

CONCLUSION

Proof of service is shown by separate instrument, the original of which is mailed to the Clerk of this Court together with the record brought up by appeal, and the forty copies of a printed statement as to jurisdiction, for filing.

For the reasons above, appellant prays that the Supreme Court of the United States take jurisdiction of this appeal, and appellant further prays for costs of court in all State Courts and in the Supreme Court of the United States.

Respectfully submitted,

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APPENDIX A

Excerpted from the FINAL JUDGMENT of the DISTRICT COURT OF TRAVIS COUNTY, TEXAS 53rd Judicial District, (Tr-60, 61)

* * * "It is further the opinion of the Court and the Court finds that the following judgment for the Defendants should, and it is now therefore accordingly ORDERED, ADJUDGED and DECREED that the following judgment for the Defendants be entered:

1. That the Pleas to the Jurisdiction and in Abatement of Defendants with respect to the members of the Legislative Redistricting Board are sustained.

2. The Pleas to the jurisdiction and in Abatement of the other Defendants are overruled.

3. That the permanent injunction sought as to the County Judges is denied.

4. That the Court finds and declares that the present Apportionment Act (House Bill 349, Acts of the 57th Legislature, Regular Session, 1961, Chapter 256, Page 544) is not in violation of the Constitution of Texas or of the Constitution of the United States.

5. That all costs be adjudged against Plaintiff, for which let execution issue" * * * *.

OPINION OF THE COURT OF CIVIL APPEALS

IN THE

COURT OF CIVIL APPEALS

THIRD SUPREME JUDICIAL DISTRICT OF TEXAS, AT AUSTIN

No. 11,262

ROBERT HAINSWORTH,

Appellant,

v.

CRAWFORD MARTIN, SECRETARY OF THE STATE OF TEXAS ET AL,

Appellees.

FROM THE DISTRICT COURT OF TRAVIS COUNTY,
53RD JUDICIAL DISTRICT, NO. 128,448,
HONORABLE HERMAN JONES, JUDGE.

Per Curiam.

The appellant here and plaintiff below brought this suit asking for a declaratory judgment concerning the validity of the method of apportionment adopted by the Legislature in the Apportionment Act of 1961[1] and asked that the county judges in those counties having two or more representatives in the State Legislature be enjoined from making returns of the elections for members of the Legislature in general and special elections and from performing other duties required by law in respect to such elections. The suit names the present Secretary of State, Attorney General and other public officials as defendants, these officials having been substituted as defendants from those

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[1] House Bill 349 Acts of the 57th Legislature, Articles 193 and 195, Vernon's Civil Statutes.

previously holding these offices and having originally been made defendants when this suit was first filed.

It should be noted at the outset that appellant is not questioning here the validity of the number of representatives apportioned to the various counties of the State. Appellant's argument is that the Constitutions of the Federal and State governments require the State to divide those counties to which more than one representative is apportioned into separate and distinct legislative districts. Thus, instead of the candidates for the Legislature running at large for various places designated on the ballot, these candidates in multicandidate counties would be assigned districts from which they would run.

Judgment in the trial court was for the defendants and denied the injunctive relief sought.

Appellant is before this Court on five points of error. The first four allege violations of the Federal and State Constitutions which we will discuss in the order presented. The fifth point is the error of the court in denying the injunctive relief sought.

At the trial of this case, appellant called numerous witnesses who, for the most part, were duly elected members of the Legislature and from these witnesses elicited testimony to the effect that they had never during their lifetimes known of a negro to serve in the Texas Legislature; that they had known of instances where qualified negroes had offered themselves as candidates for the Legislature but that they had not been elected; that if districts were set up within the counties a negro or other member of a minority race would have a better chance of election; that there are 17 counties in the State of Texas that are entitled to two or more representatives.

Appellant presented detailed testimony as to the population of the abovementioned 17 counties, the number of whites and negroes in each and that the last negro to serve in the Texas Legislature was in the 1880's.

The crux of appellant's argument is that if the larger counties were divided into representative districts that are separate and distinct as to area and population, such a division would afford a legislative candidate who was a negro or who was from a minority racial group a fairer and more equal opportunity to be elected to the State Legislature. This contention is based on the argument that at the present time negroes and other minority groups live together in certain neighborhoods that presumably would be segregated into the voting districts desired.

Appellant presented a very able argument to this Court as to the merits of his case, however, his arguments are political in nature and their consideration should be by the legislative branch of the government and not the courts. For this reason and also for the other reasons hereinafter detailed, we must hold that the judgment of the trial court was correct.

Several recent opinions of the United States Supreme Court have foreclosed appellant's contention that the present method of selecting members of the Legislature in multimember counties is in violation of the 14th Amendment of the Federal Constitution.

In June of 1964, in an opinion styled *Reynolds* v. *Sims*, 12 L. ed. 2d 506, 84 S. Ct. 1362; 377 U.S. ..... wherein the Supreme Court of the United States required the states to reapportion certain election districts so as to effect a more equal representation for equal numbers of people, multimember districts were specifically approved. This point was fortified on the same day that *Sims* was handed

down by *Lucas* v. *Forty-Fourth General Assembly of the State of Colorado,* 12 L. ed. 2d 632, wherein the court pointed out in Footnote 21, at 84 S. Ct. 1483:

> "We do not intimate that apportionment schemes which provide for the at-large election of a number of legislators from a county, or any political subdivision, are constitutionally defective. Rather, we merely point out that there are certain aspects of electing legislators as a whole that might well make the adoption of such a scheme undesirable to many voters residing in multi-member counties."

Again in *Sims* the U. S. Supreme Court cited with approval the law from *Wesberry* v. *Sanders,* 376 U.S. 1, 11 L. ed. 2d 481, 84 S. Ct. 526:

> ". . . Wesberry clearly establishes that the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place or residence within a state."

Thus under the law the vote of one citizen is equal to that of another "without regard to race, sex, economic status, or place of residence within a state."

Sections 26 and 26a of Article 111 of the Texas Constitution[2] merely provide the manner in which members of

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[2] Section 26. "The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States Census, by the number of members of which a House is composed; provided, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county,

the House of Representatives shall be apportioned among the several counties. See this Court's opinion in *Miller* v. *James*, Tex. Civ. App., 366 S.W. 2d 118. These sections do not require the apportionment of districts within the counties.

Nor do we believe that Section 3 of Article 1 or Section 19 of Article 1 of the Texas Constitution[3] uphold appellant's contention for the same reasons given by the United States Supreme Court in *Sims* and *Lucas* cited above.

Inasmuch as we hold that appellant's contentions do not invalidate the reapportionment Act, we need not discuss the appellant's fourth point respecting the injunction sought.

The judgment of the trial court is affirmed.
Affirmed.

Filed: January 20, 1965.

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and for any surplus of population it may be joined in a Representative District with any other contiguous county or counties."

Section 26a. "Provided however, that no county shall be entitled to or have under any apportionment more than seven (7) Representatives unless the population of such county shall exceed seven hundred thousand (700,000) people as ascertained by the most recent United States Census, in which event such county shall be entitled to one additional Representative for each one hundred thousand (100,000) population in excess of seven hundred thousand (700,000) population as shown by the latest United States Census; nor shall any district be created which would permit any county to have more than seven (7) Representatives except under the conditions set forth above."

[3] Section 3. "All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate emoluments, or privileges, but in consideration of public service."

Section 19. "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by due course of the law of the land."

ORDERS OF THE SUPREME COURT OF TEXAS

IN THE
SUPREME COURT OF TEXAS

April 14, 1965

No. A-10,662

Robert Hainsworth,

v.

Crawford Martin, Secretary of the State of Texas, et al.

FROM TRAVIS COUNTY, THIRD DISTRICT

Application of petitioner for writ of error to the Court of Civil Appeals for the Third Supreme Judicial District having been duly considered, and the Court having determined that the application presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said application be, and hereby is, refused.

It is further ordered that applicant, Robert Hainsworth, and surety, Lawyers Surety Corporation, pay all costs incurred on this application.

May 26, 1965

No. A-10,662

Robert Hainsworth,

v.

Crawford Martin, Secretary of the State of Texas, et al.

FROM TRAVIS COUNTY, THIRD DISTRICT

Petitioner's motion for rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

I, GEO. H. TEMPLIN, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appears of record in the minutes of said Court under the dates shown.

WITNESS my hand and the seal of the Supreme Court of Texas, at the City of Austin, this, the 31st day of May, 1965.

GEO. H. TEMPLIN, *Clerk*

By /s/ Jewell Seeliger, Deputy
Mrs. Jewell Seeliger

APPENDIX B

The pertinent text of the State Statute involved is set forth below:

REPRESENTATIVE DISTRICTS

Art. 195. [26] [18] [13] Representative districts; returns

Section 1. The Representative Districts of the State of Texas shall be composed respectively of the following named Counties and each District shall be entitled to elect one Representative except as otherwise provided herein:

1. Bowie
2. Morris, Cass, Marion
3. Harrison
4. Rusk, Panola
5. Nacogdoches, San Augustine, Shelby
6. Trinity, Angelina
7. Jasper, Newton, Tyler, Sabine
8. Orange
9. Jefferson
   - Place 1
   - Place 2
   - Place 3
   - Place 4
10. Lamar, Red River
11. Delta, Hopkins, Franklin, Titus
12. Wood, Upshur, Camp
13. Gregg
14. Smith

15F. Smith, Gregg

16. Anderson, Cherokee
17. Houston, Walker, Leon
18. Madison, Grimes, Montgomery
19. San Jacinto, Polk, Hardin
20. Liberty, Chambers

21. Galveston
    Place 1
    Place 2
22. Harris
    Place 1
    Place 2
    Place 3
22. Harris
    Place 4
    Place 5
    Place 6
    Place 7
    Place 8
    Place 9
    Place 10
    Place 11
    Place 12
23. Brazoria
24. Fannin, Hunt
25. Kaufman, Rockwell
26. Rains, Van Zandt, Henderson
27. Falls, Limestone, Freestone
28. Brazos
29. Washington, Austin, Waller
30. Fort Bend
31. Wharton
32. Matagorda, Jackson
33. Victoria, Calhoun
34. Goliad, Live Oak, Bee, Refugio
35. San Patricio, Arkansas
36. Nueces
    Place 1
    Place 2
    Place 3
    Place 4

37F. Kleberg, Kenedy, Hidalgo
38. Hidalgo
Place 1
Place 2
Place 3
39. Cameron
Place 1
Place 2
40F. Willacy, Cameron
41. Ellis
42. Hill, Navarro
43. McLennan
Place 1
Place 2
Place 3
44. Bell
Place 1
Place 2
45. Milam, Robertson, Burleson
46. Bastrop, Fayette, Colorado
47. Gonzales, Lavaca, DeWitt
48. Grayson
49F. Grayson, Cooke
50. Collin
51. Dallas
Place 1
Place 2
Place 3
Place 4
51. Dallas
Place 5
Place 6
Place 7
Place 8
Place 9
52. Johnson, Somervell, Bosque

53. Hamilton, Coryell, Erath
54. Williamson, Lee
55. Travis
    - Place 1
    - Place 2
    - Place 3
    - Place 4
56. Blanco, Hays, Caldwell
57. Kendall, Comal, Guadalupe
58. Wilson, Karnes, Atascosa, Frio, LaSalle, McMullen
59. Denton
60. Tarrant
    - Place 1
    - Place 2
    - Place 3
    - Place 4
    - Place 5
    - Place 6
    - Place 7
61. Montague, Clay, Archer, Young, Jack
62. Parker, Wise, Hood
63. Palo Pinto, Stephens, Shackelford, Callahan, Eastland
64. Runnels, Coleman, Brown, Comanche
65. McCulloch, San Saba, Lampassas, Burnet, Llano, Gillespie, Mills
66. Mason, Kimble, Kerr, Bandera, Real, Edwards, Sutton, Menard, Schleicher, Crockett, Concho
67. Uvalde, Medina, Zavala, Dimmit
68. Bexar
    - Place 1
    - Place 2
    - Place 3
    - Place 4
    - Place 5

Place 6
Place 7
69. Webb, Zapata
70. Jim Wells, Brooks, Jim Hogg, Duval, Starr
71 Maverick, Kinney; Val Verde, Terrell
72. Brewster, Pecos, Crane, Upton, Ward
73. Presidio, Jeff Davis, Reeves, Winkler, Loving, Culberson, Hudspeth
74. El Paso
Place 1
Place 2
Place 3
Place 4
Place 5
75. Andrews, Gaines, Dawson, Lynn
76. Ector
77. Midland
78. Martin, Howard, Glasscock, Sterling, Coke, Regan, Irion
79. Tom Green
80. Michell, Nolan, Fisher, Stonewall, Dickens, King
81. Wichita
Place 1
Place 2
82. Wilbarger, Foard, Hardeman, Cottle, Motley, Childress, Hall, Donley
83. Knox, Baylor, Haskell, Throckmorton, Jones
84. Taylor
Place 1
Place 2
85. Crosby, Garza, Kent, Borden, Scurry
86. Hutchinson, Ochiltree, Lipscomb, Roberts, Hemphill
87. Gray, Wheeler, Collinsworth
88. Lubbock
Place 1

Place 2
Place 3

89. Swisher, Briscoe, Hale, Floyd
90. Cochran, Hockley, Yoakum, Terry
91. Parmer, Castro, Bailey, Lamb, Deaf Smith
92. Oldham, Hartley, Dallam, Sherman, Moore, Hansford
93. Potter
Place 1
Place 2

94F. Potter, Carson, Randall, Armstrong

Acts 1961, 57th Leg., p. 544, ch. 256, § 1.

Sec. 2. Repealed. Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(c), eff. 90 days after May 24, 1963, date of adjournment.

Effective 90 days after May 29, 1961, date of adjournment.

Prior to repeal, section 2 of this article was amended by Acts 1961, 57 Leg., p. 544, ch. 256, § 2.

See, now, V.A.T.S. Election Code, arts. 8.41, 8.42.

Section 3 of the Act of 1961 provided: "This Act shall become effective for the elections, Primary and General, for all Representatives, from the places herein specified and described, to the Fifty-eighth Legislature, and continue in effect thereafter for succeeding Legislatures; provided specifically, that this Act shall not affect the membership, personnel or Districts, of the Fifty-seventh Legislature; and provided further, that in case a vacancy occurs in the office of any Representative of the Fifty-seventh Legislature by death, resignation, or otherwise, and a Special Election to fill such vacancy becomes necessary, said election shall be held in the District as it now exists."

APPENDIX C

Excerpts from the text of several of the proposed Constitutional Amendments are set forth below:

PROPOSED CONSTITUTIONAL AMENDMENT — LEGISLATURE — MEMBERSHIP

S. J. R. No. 44

Proposing an Amendment to Sections 2 and 25 of Article III of the Constitution of the State of Texas so as to provide for an increase in the membership of the State Senate from 31 to 39 members; to fix the membership in the House of Representatives at 150 members; to require apportionment of the Senate according to population; and to delete the limitation that no single county is entitled to more than one Senator.

Be it resolved by the Legislature of the State of Texas:

• • • •

Sec. 2. The foregoing Constitutional Amendment shall be submitted to a vote of the qualified electors of this state at an election to be held on the 7th day of September, 1965, at which election all ballots shall have printed on them the following:

"FOR the Constitutional Amendment increasing the membership of the State Senate from 31 to 39 members, retaining the present membership of the House of Representatives, requiring apportionment of the Senate according to population, and deleting the limitation that no single county is entitled to more than one Senator."

"AGAINST the Constitutional Amendment increasing the membership of the State Senate from 31 to 39 members, retaining the present membership of the House of Representatives, requiring apportionment of the Senate according to population, and deleting the limitation that no single county is entitled to more than one Senator."

• • • •

PROPOSED CONSTITUTIONAL AMENDMENT — EXECUTIVE OFFICES — TERMS

S. J. R. No. 14

Proposing Amendments to Sections 4, 22 and 23 of Article IV of the Constitution of the State of Texas, so as to provide a four-year term of office for the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office and Secretary of State; and certain statutory state officers; providing for the necessary election and the form of the ballot; and providing for the necessary proclamation and publication.

Be it resolved by the Legislature of the State of Texas:

* * * *

Sec. 4. The foregoing Constitutional Amendments shall be submitted to a vote of the qualified electors of this state at an election to be held on the first Tuesday after the first Monday in November, 1965, at which election all ballots shall have printed thereon the following:

"FOR the Constitutional Amendments providing a four-year term of office for the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office, Secretary of State, and any statutory state officer who is elected by the electorate of Texas at large, unless a term of office is otherwise specifically provided in this Constitution."

"AGAINST the Constitutional Amendments providing a four-year term of office for the Governor, Lieutenant Governor, Attorney General, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office, Secretary of State, and any statutory state officer who is elected by the electorate of Texas at large, unless a term of office is otherwise specifically provided in this Constitution."

* * * *

PROPOSED CONSTITUTIONAL AMENDMENT — STATE REPRESENTATIVES — TERMS

S. J. R. No. 47

Proposing an Amendment to Section 4, Article III, Constitution of the State of Texas, to provide four-year terms of office for State Representatives.

Be it resolved by the Legislature of the State of Texas:

* * * *

Sec. 2. The foregoing Constitutional Amendment shall be submitted to a vote of the qualified voters of the state at an election to be held on the first Tuesday after the first Monday in November, 1965, at which election all ballots shall have printed on them the following:

"FOR the Constitutional Amendment to provide for a four-year term of office for State Representatives."

"AGAINST the Constitutional Amendment to provide for a four-year term of office for State Representatives."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 477

ROBERT HAINSWORTH,

Petitioner,

v.

CRAWFORD MARTIN, SECRETARY OF STATE OF THE STATE OF TEXAS, ET AL.,

Respondents.

PETITION FOR REHEARING

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PETITION FOR REHEARING

To the Honorable Mr. Chief Justice and to the Honorable Mr. Justices of the Supreme Court of the United States:

Now comes the petitioner, Robert Hainsworth, by his counsel, and respectfully prays for a rehearing of this case, which the Supreme Court held to have become moot in the light of the enactment of the Texas Apportionment Act of 1965. This petition is made upon the following grounds:

1961 APPORTIONMENT ACT YET IN EFFECT

That Section 3 of the 1961 Apportionment Act, which was enacted about May 29, 1961, provides: "This Act shall become effective for the elections, Primary and General, for all Representatives, from the places herein specified and described, to the Fifty-eighth Legislature, and continue in effect thereafter for succeeding Legislatures; * * * ". Vernon's Texas Civ. St., 1962 Supp. Art. 195.

That Section 3, of the 1965 Apportionment Act, which was enacted about May 27, 1965, provides: "This Act shall become effective for the elections, Primary and General, for all Representatives, from the places herein specified and described, to the Sixtieth Legislature, and continue in effect thereafter for succeeding Legislatures; provided specifically that this Act shall not affect the membership, personnel or Districts, of the Fifty-ninth Legislature; and provided further, that in case a vacancy occurs in the office of any Representative of the Fifty-ninth Legislature by death, resignation or otherwise, and a Special Election to fill such vacancy becomes necessary, said election shall be held in the District as it was constituted on January 1, 1965." Vernon's Texas Session Law Service, Volume No. 4, Page 758, Laws 1965, 59th Legislature, Regular Session.

From the above, it is evident that there are conflicting provisions as to when the 1965 Apportionment Act shall be effective. Listed below are some possible effective dates:

1. Effective Aug. 30, 1965, 90 days after date of adjournment.

2. On or about February 7, 1966; as the Act shall become effective for the elections, Primary and General, for all Representatives to the Sixtieth Legislature. Last filing date for such elections, on or about February 7, 1966.

3. Final effective date of the Act may extend to late in 1966; for if there is a vacancy in the 59th Legislature, the vacancy shall be filled under the 1961 Apportionment Act.

4. On or about January 1, 1967; for the present members of the legislature, the 59th Legislature, which enacted the 1965 Apportionment Act, and who were elected under the 1961 Apportionment Act, are still serving in the Legislature under the 1961 Apportionment Act, and will so con-

tinue to serve in the Legislature until after November 1, 1966, or until the end of the 59th Legislature, which is on or about January 1, 1967.

That the only instance whereby the 1961 Apportionment Act would be actually repealed as of now, is by the general provision of law, namely, 90 days after date of adjournment. And as the other possible effective dates for the 1965 Apportionment Act are still in the future, and as they are specific provisions, the specific provisions of a law take precedence over the general provisions, that therefore the 1961 Apportionment Act will be effective until late in 1966, or at the least, the earliest effective date for the repeal of the 1961 Apportionment Act would be on or about February 7, 1966.

On the basis of the above, it is respectfully submitted that the 1961 Apportionment Act is yet in effect, and has not yet been repealed, and that therefore the instant case is not moot.

If, after considering the above, and in the event that the Supreme Court of the United States concludes that the 1961 Apportionment Act has been repealed, as additional grounds for granting a rehearing, the petitioner respectfully shows the Court the following:

REQUIREMENT FOR CASE TO BE MOOT WHEN STATE STATUTE SAID REPEALED

In the case of *Berry* v. *Davis,* 242 U.S. 468, 37 Sup. Ct. 208, 61 L. Ed. 441 (1917), the Supreme Court of the United States with Mr. Justice Holmes delivering the opinion of the Court, set forth the requirments for a case to be moot, where a state statute is involved, namely:

1. The state statute must be repealed.

2. The new act or substituted statute does not apply to the plaintiff.

3. There is no possibility or threat of the new statute adversely affecting the rights of the plaintiff.

Even though it is concluded that the 1961 Apportionment Act has been repealed, still the other requirements under the *Berry* v. *Davis* case, *supra,* are not met. For the new statute, the 1965 Apportionment Act does apply to the plaintiff and petitioner. And there is possibility and threat that the 1965 Apportionment Act will adversely affect the plaintiff and petitioner here, and others similarly situated in the same manner as the 1961 Act.

Listed below are some comparative provisions of the 1961 Apportionment Act and the 1965 Apportionment Act:

County	District	1961 Act	County	District	1965 Act
Dallas	51	9 Representatives	Dallas	33	14 Representatives
Tarrant	60	7 Representatives	Tarrant	52	8 Representatives
Bexar	68	7 Representatives	Bexar	57	10 Representatives
Travis	55	4 Representatives	Travis	39	3 Representatives
Harris	22	12 Representatives	Burnet, Travis	40F	1 Representative
			Harris	22	7 Representatives
			Harris	23	6 Representatives
			Harris	24	6 Representatives

Under the 1961 Apportionment Act, all of the candidates for State Representative, in each of such counties above, ran at large or county-wide. Under the 1965 Apportionment Act, all of the candidates for State Representative, in each of such counties above, except Harris County, will run at large or county-wide. In Harris County, which has been subdivided into three districts, which parallel and correspond to the Congressional Districts in Harris County, the candidates for State Representative will run Congressional district wide.

Harris County, prior to the Congressional Reapportionment of 1965, had two Congressional Districts, namely, the Eighth Congressional District, and the Twenty-second Congressional District.

The total population 1960 for the Eighth District was 568,193. Now, of that, white, 419,764; Negro, 146,896. Now, the total of the Twenty-second District is 674,965. And that is divided white 573,924; Negro 99,452 (S.F. 31). From the above population totals it can be seen that in the Eighth Congressional District, the white population outnumbered the negro population by slightly under 3 to 1. And in the Twenty-second Congressional District, the white population outnumbered the negro population by slightly more than 5 to 1. It can be reasonably concluded that with Harris County now having three Congressional Districts, that the white population would outnumber the negro population by slightly under 3 to 1, to slightly more than 5 to 1, in each of the three Congressional Districts, or the three state Representative districts, namely, Districts 22, 23, and 24.

Under either the 1961 Apportionment Act or the 1965 Apportionment Act, as the white people outnumber the colored people, the vote of colored people will be so diluted

that the white majority voters in such multi-member districts can veto the candidacy of a colored candidate for the State legislature at their will, and colored people under the state legislative scheme of apportionment will not have as equal an opportunity as white people to be elected to the state legislature.

Since, under the rule laid down by the Supreme Court of the United States as delivered in the opinion of Mr. Justice Holmes in the Berry Case, *supra,* the instant case would not become moot because of the enactment of the Texas Apportionment Act of 1965, for it does not meet two of the requirements for a case to become moot, petitioner respectfully prays that the Supreme Court grant a rehearing of the instant case, because the new statute, the 1965 Apportionment Act, does apply to the plaintiff and petitioner, and there is possibility and threat of the new statute, the 1965 Apportionment Act adversely affecting the rights of the plaintiff and petitioner.

SUBSTANTIALITY OF FEDERAL QUESTION

In the per curiam opinion of the Court in the instant case Mr. Justice Harlan and Mr. Justice Stewart would dismiss the appeal for the want of a substantial federal question. Additionally, to show that a substantial federal question is presented, the following is repectfully submitted:

I.

The Supreme Court of the United States in *Reynolds* v. *Sims,* 84 Sup. Ct. 1381, with Mr. Chief Justice Warren delivering the opinion of the Court, stated: "A predominant consideration in determining whether a State's legislative apportionment scheme constitutes an invidious discrimination violative of rights asserted under the Equal Pro-

tection Clause is that the rights allegedly impaired are individual and personal in nature."

Mr. Justice Stewart in his dissent, in *Lucas* v. *Colorado General Assembly,* and in *WMCA, Inc.* v. *Lomenzo,* and as reported in *WMCA, Inc.* v. *Lomenzo,* 84 Sup. Ct. 1439, stated: "A policy guaranteeing minimum representation to each county is certainly rational, particularly in a State like New York. It prevents less densely populated counties from being merged into multi-county districts where they would receive no effective representation at all."

If the above view is sound, it appears that "a fortiori", the same principle would apply to colored people in a state like Texas, so that they as a racial group and as a minority, would not be merged into multi-member districts, either county-wide or congressional district wide, where they receive no effective representation at all, and their needs and interests can not be brought to the attention of the legislative body. The colored people of the State of Texas, although a minority, having their aspirations and their hopes and their interests; just as surely belong to the State of Texas as do the majority white people, who can by the scheme of legislative apportionment in effect in Texas elect all of the state representatives to the State Legislature to the exclusion of any colored state representative.

And it may be noted that even under the apportionment formula of New York State, that in New York City there are individual state representative districts; and not multi-member state representative districts, where the state representatives run city wide or county wide.

If there is rationality in the apportionment plan of New York and Colorado as discussed by Mr. Justice Stewart in his dissent, then it most respectfully appears that there is irrationality in the Texas plan or scheme of legislative

apportionment as well as a substantial federal question, for the State of Texas by its plan or scheme of apportionment has completely silenced or engulfed the colored people of the State for scores of years in so far as being elected to the State Legislature is concerned. And it should also be remembered, that the less densely populated counties of Colorado and New York, have had for scores of years, if not ever since that each was a sovereign State, some representation in the legislature body, while the negro people of the State of Texas have not had a negro representative in the legislative body for scores of years. (S.F. 93).

II.

Mr. Justice Harlan in his dissent in *Reynolds* v. *Sims*, 84 Sup. Ct. 1396, goes back "to the Fourteenth Amendment as a whole or to the legislative history of the Amendment pertinent to the matter at hand". And at page 1399, there are quotes from Mr. Thaddeus Stevens in the House concerning the Equal Protection Clause. "This amendment * * allows Congress to correct the unjust legislation of the States so that the law which operates upon one man shall operate equally upon all." And at page 1400, " * * * I need not enumerate these partial and oppressive laws. Unless the Constitution should restrain them those States will all, I fear, keep up this discrimination, * * *".

And quoting from the remarks of Mr. Binham, page 1400, " * Allow me, Mr. Speaker, in passing to say that this amendment takes from no State any right that ever pertained to it. No State ever had the right under the forms of law or otherwise, to deny to any person the equal protection of the laws or to abridge the privileges or immunities of any citizen of the Republic, although many of them have assumed and exercised the power, and that without remedy."

And on page 1401, quoting from the debate in the Senate, with Senator Howard explaining the meaning of the Equal Protection Clause, he said: "* * * It protects the black man in his fundamental rights as a citizen with the same shield which it throws over the white man". * * *."

It is respectfully submitted that the legislative history of the Fourteenth Amendment shows that the design and purpose of the Fourteenth Amendment was to protect the colored man from hostile and discriminatory State action, to accord to the colored man the same rights as to a white man, and if that is so, then the Equal Protection of the Laws Clause of the Fourteenth Amendment should require the State of Texas to enact an apportionment statute, a plan of legislative apportionment that will enable a colored man to have as equal an opportunity as a white man to be elected to the state legislature. And that means that the state representative districts in the larger counties of the State of Texas that are entitled to two or more state representatives are apportioned into single member state representative districts, and that multi-member state representative districts in Texas are not permissible because racially discriminatory. Too, single member districts in such counties would not deprive or deny to white people of the State of Texas any constitutional right.

In *Reynolds* v. *Sims,* Pages 1403, 1404, Mr. Justice Harlan further quotes in his dissent: "Each of the 10 'reconstructed' States was required to ratify the Fourteenth Amendment before it was readmitted to the Union. The Constitution of each was scrutinized in Congress".

The Constitution of the State of Texas of 1866, provided in Article III, Section 5. "No person shall be a representative unless he be a white citizen of the United States, * * *".

Vol. 3, of Vernon's Ann. Tex. Const. Art. 3, Sec. 5. (Page 605).

By looking at the history of Texas from even beyond the Fourteenth Amendment, it is evident that the State policy has been, prior to the Fourteenth Amendment, by a provision of the State Constitution, and since that time, with the exception of the period from the adoption of the Fourteenth Amendment until about the 1880's or 1890's, to keep colored people out of the Legislature of the State of Texas. And this has been done in some years past after the adoption of the Fourteenth Amendment, by means of the White Man's Primary, note the "White Primary" cases, *Nixon* v. *Herndon,* 273 U.S. 536, *Nixon* v. *Condon,* 286 U.S. 73, *Grovey* v. *Townsend,* 295 U.S. 45, *Smith* v. *Allwright,* 321 U.S. 649; and after the Supreme Court held that the "White Primary" was unconstitutional, the State of Texas has continued to effectuate the State policy of keeping colored people out of the State Legislature, through its scheme or method or system of legislative apportionment which has been on the statute books of the State for scores of years.

For the reasons stated above, it is respectfully submitted that there is a substantial federal question presented in the instant case.

CONCLUSION

Wherefore, in order that justice may be done in the instant case, and upon the grounds stated herein, it is respectfully submitted that the Supreme Court follow the rule laid down in *Berry* v. *Davis,* 242 U.S. 468, 37 Sup. Ct. 208, 61 L. Ed. 441 (1917), and not overrule *Berry* v. *Davis, supra,* and that this petition for rehearing be granted, that the Supreme Court take jurisdiction of this appeal, give

plenary consideration to the question presented, with briefs on the merits, and oral argument for their solution, and that the consideration of the case be advanced.

Respectfully submitted,

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PROOF OF SERVICE

Proof of service is shown by separate instrument. Forty copies of the Petition for Rehearing, printed in conformity with Rule 39, are mailed to the Clerk of the Supreme Court of the United States for filing, accompanied by the original copy of Proof of Service.

CERTIFICATE

I certify that this petition is presented in good faith and not for delay.

ROBERT W. HAINSWORTH
Counsel for Petitioner

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